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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 30 1997

FILED 2/1/97

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In the Matter of: )  
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Petition for Rulemaking to reclassify ) RM-9006  
AT&T as having dominant )  
carrier status )

To: The Commission

Total Telecommunications Services, Inc. ("TTS") is an interstate common carrier presently engaged in the business of providing terminating switched access services to interexchange companies which permits completion of long distance calls between interexchange carrier customers and those end-user customers of TTS. TTS provides these services pursuant to its Tariff F.C.C. No. 1 which was filed on July 31, 1995 and became effective August 1, 1995. TTS is submitting this filing in support of a request filed on December 31, 1996 by the United Homeowners Association ("UHA") and United Seniors Health Cooperative ("USHC") that the Federal Communications Commission ("FCC" or "Commission") reexamine its position with respect to the decision to declassify AT&T Corp. ("AT&T") as a dominant carrier of long distance telephone service. TTS supports UH's and USHC's position that the FCC erred in its decision on October 23, 1995, when it granted AT&T's motion to be reclassified as a non-dominant carrier. We further support UH's and USHC's request that the Commission undertake an expeditious review AT&T's nondominant status and that AT&T's dominant status be reinstated.

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## Background

On October 23, 1995, the Commission released an Order in which it granted the motion of AT&T Corp. for its reclassification as a non-dominant carrier for interstate domestic interexchange telecommunications services under Part 61 of the Commission's Rules.<sup>1</sup> This Order was to take effect November 22, 1995.<sup>2</sup> Many commenters objected to this course of action due to potential future anticompetitive action by AT&T, especially in the resale market.<sup>3</sup> The Commission disregarded these concerns by relying upon AT&T's voluntary commitment<sup>4</sup> in maintaining the belief that AT&T would not take advantage of any beneficial position it may still possess.<sup>5</sup> TTS intends to demonstrate that this reliance has been misplaced, based upon AT&T's conduct in its dealings with TTS by egregiously cutting off service to TTS and its end user on the very same day that the Order was to become effective. In response to this action by AT&T, TTS filed a Petition

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<sup>1</sup>Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427, Released October 23, 1995 ("Order"), at par. 169. See Motion for Reclassification of American Telephone and Telegraph Company as a Non-Dominant Carrier, CC Docket No. 79-252, filed September 22, 1993.

<sup>2</sup>Id.

<sup>3</sup>"A number of parties who resell AT&T services take issue with AT&T's characterization of the long distance industry as competitive and with AT&T's claim that it lacks market power. They claim that AT&T is uniquely positioned to engage in anticompetitive behavior that inhibits resale, and they allege a pattern of behavior by AT&T that is contrary to our policies promoting resale." Order, para. 116.

<sup>4</sup>AT&T, September 21, 1995 ex parte letter from R. Gerard Salemme, Vice President - Government Affairs, to Kathleen M.H. Wallman, Chief, Common Carrier Bureau, Federal Communications Commission (AT&T September 21, 1995 Ex Parte Letter).

<sup>5</sup>"Moreover, we believe AT&T's voluntary commitments will effectively restrain AT&T's exercise of any market power it may have . . . ." Order, para. 134 and 142.

for Reconsideration<sup>6</sup> asking the Commission to reconsider its Order. No action or response was forthcoming by the Commission.

## **Discussion**

As already stated, on October 23, 1995, the Commission released an Order in which AT&T's status was reclassified as a non-dominant carrier. This order took effect on November 22, 1995. On that very day, AT&T took advantage of its market position by taking unlawful action which would result in irreparable injury to TTS.

Beginning on or about August 1, 1995, in accordance with its effective tariff FCC No. 1, TTS provided access service to AT&T's customers under a meet point billing arrangement, with service jointly provided by TTS and two other LECs, Southwestern Bell ("SWB") and Atlas Telephone Company, Inc. ("Atlas"). By submitting several Access Service Requests ("ASRs") to Atlas, AT&T ordered terminating switched access service to TTS's end office switch, for the purpose of terminating AT&T subscribers' calls placed to the end users served by TTS's switch, as contemplated by TTS's Tariff.<sup>7</sup> Thereafter, TTS provided terminating access service to AT&T and

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<sup>6</sup> See, Total Telecommunications Services, Inc., Petition for Reconsideration and Motion for Acceptance of Petition for Reconsideration, CCB Pol 95-25, filed on January 23, 1996.

<sup>7</sup>For example, AT&T submitted an ASR to Atlas on July 27, 1995 (and resubmitted the ASR on August 7, 1995) ordering additional switched access service (specifically, 168 trunks) for traffic to terminate at TTS's end office, through the Atlas access tandem switch located at Big Cabin, Oklahoma, with the service to be available to AT&T starting August 15, 1995. This ASR submitted by AT&T to Atlas satisfies the requirements for an access service order specified in Section 5 of TTS's Tariff, and unquestionably contemplates the joint provision of the service under a meet point billing arrangement. AT&T also submitted additional ASRs in the same manner on September 6, 1995 and September 13, 1995, ordering 72 and 96 additional trunks, respectively.

to its customers for a period of approximately four months.

Pursuant to its effective FCC tariff, TTS is and was entitled to receive compensation when AT&T uses TTS's access services to terminate interstate telephone calls made by AT&T's customers to telephone numbers assigned by TTS to its customer end-user. However, on or about November 22, 1995, (the effective date of the Order), AT&T made the extraordinary decision to block and discontinue all service to its own long distance customers placing calls to be terminated at facilities operated by TTS. The Commission should be clear that by its action AT&T is controlling its customers insofar as what numbers they may call and those AT&T won't let them call.

AT&T's only purported grounds for the wrongful blocking and discontinuance of such communications services is that it purportedly did not "order" terminating access from TTS. AT&T's refusal to interconnect continues even though AT&T has been requested by its own customers to provide communication services to telephone numbers terminated through TTS's end office. AT&T has also refused to pay to TTS the compensation for terminating the interstate telephone calls of AT&T's paying customers pursuant to TTS's tariff for those services which were provided prior to the wrongful termination of services. This is true even though it has billed its customers for the services and presumed to receive payment for those services.

In addition to preventing its customers from completing telephone calls that terminate at facilities operated by TTS, AT&T falsely represents to its customers that the numbers they seek to reach are "invalid," "disconnected," or "not in service" even though these very numbers can be reached by using other carriers. This causes customers and potential customers to abandon TTS as a service provider. These deliberate actions have caused great and irreparable harm to TTS.

Immediately following AT&T's refusal to make payment and to complete calls, TTS

attempted to work with AT&T to achieve an acceptable solution. TTS offered to reduce its bills, believing that the rates were the difficulty. AT&T still refused to deal with TTS and so TTS filed suit against AT&T which suit was referred to the FCC by the U.S. District Court for the District of Columbia.<sup>8</sup> TTS has since filed a complaint before the FCC. File No. E-97-03.

This wanton pattern of conduct by AT&T demonstrates its ability and inclination to take advantage of its superior market position with respect to ridding themselves of competition. By unlawfully refusing to interconnect with TTS and then misinforming its customers seeking to call TTS's numbers, AT&T effectively may put TTS out of business. The Commission relied heavily upon AT&T's stated commitment to act in good faith and not to take advantage of its market position.

These actions demonstrate that AT&T can not be relied upon to act in good faith and that the Commission's reliance on AT&T was misplaced. A most appropriate and deserving means to avoid such anticompetitive conduct is for the Commission to reconsider its decision and reclassify AT&T as a dominant carrier. This elevated level of regulation will continue to guard against egregious and unlawful actions such as those taken against TTS by AT&T in the future.

## CONCLUSION

Due to the behavior of AT&T since it has been declared nondominant by the Commission, TTS wholeheartedly supports the Petition for Rulemaking filed by UH and USHC. We respectfully request that the Commission revisit this issue and consider the abuses of position that TTS, UH and USHC have observed and experienced. TTS has first-hand experience that AT&T still has market

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<sup>8</sup>*Total Telecommunications Services, Inc., et. al. v. American Telephone & Telephone Company*, Civil Action No. 95CV02273 (RMU).

power and abuses that market power in its operations. Therefore, in order to protect both consumers and competition in the telecommunications industry, the Commission should reevaluate its previous decision and reclassify AT&T as dominant in accordance with the request filed by UH and USHC.

Respectfully submitted,

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January 30, 1997

## CERTIFICATE OF SERVICE

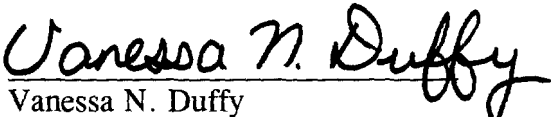
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